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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,012	07/25/2003	Mark Neria	178.01-P-USA	5189
30040	7590	01/11/2006	EXAMINER	
MICHAEL A. SHIPPEY, PH. D. 4848 LAKEVIEW AVENUE SUITE B YORBA LINDA, CA 92886			ADAMS, GREGORY W	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/627,012	NERIA, MARK
	Examiner Gregory W. Adams	Art Unit 3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 September 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 and 7-12 is/are pending in the application.
  - 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 and 7-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 September 2005 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claim 1, 2, 4-5, 8 & 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler (US 2,941,683) in view of Moser et al. (US 6,685,420) (previously cited).

With respect to claim 1, referring to FIGS. 1-6 Fowler discloses a device 11 comprising a pair of rectangular tubes 13, 14, vertical support plate 20, 28, a pole 11, 27 extending from a vertical support plate 20, 28, and a base plates 12. It is noted that McCraken discloses supporting rolls to be lifted a pole 11, 27 in a hanging manner. Fowler does not disclose intermediate positioning of a vertical support plate. Moser discloses a vertical support plate 44 positioned at an intermediate point such that in forklift attachments Moser et al. provide a rugged, reliable transport system for utilization in marine and cargo capacities. Col. 1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Fowler's apparatus to include a vertical support plate positioned at an intermediate point, as per the teachings of Moser et al., to work under strenuous conditions.

With respect to claim 2, referring to FIGS. 1-6 Fowler discloses a device 11 further comprising side gussets 22, 22, 29, 29, 32, 32.

With respect to claim 4, referring to FIGS. 1-6 Fowler discloses a device 11 further comprising a support collar 29'.

With respect to claim 5, referring to FIGS. 1-6 Fowler discloses a device 11 further comprising means for replaceably removing a pole 11, 27.

With respect to claim 8, referring to FIGS. 1-6 Fowler discloses parallel tubes 13, 14 flush with device leading edge when pole removed.

With respect to claim 11, referring to FIGS. 1-6 Fowler discloses fork receivers 13, 14 extend outward from vertical support plate 20, 28 on the same side as a pole 11, 27.

With respect to claim 12, referring to FIGS. 1-6 Fowler discloses a device 11 in combination with a forklift 15, 16 to move rolled goods.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler (US 2,941,683) in view of Moser et al. (US 6,685,420) and McCracken (US 3,050,206). Fowler '683 discloses a device 11 but does not disclose a locking device for locking a device to fork-lift forks. Referring to FIGS. 1-8 McCracken '206 discloses a device 20

further comprising locking devices 25, 26, 27, 28, 29, 30, 31 for securing locking tubes to a forklift truck forks 17 to prohibits the device 20 from longitudinally sliding off forklift truck forks 17. Col. 2, Ins. 25-39. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Fowler '683 to include a locking device, as per the teachings of McCraken, such that longitudinally sliding is prohibited.

4. Claims 7 & 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler (US 2,941,683) in view of Moser et al. (US 6,685,420) and Harris (US 3,705,658) (previously cited).

With respect to claim 10, Fowler does not disclose a inserting a pole into a roll with no length left hanging over. Referring to FIGS. 1-6 Harris '658 discloses a pole 18 length sufficient for standard commercial roll of rolled goods and no length is left hanging over the pole free end. Col. 1, Ins. 13-25. Harris '658 teaches that a properly dimensioned pole 18 presents substantial advantages in that it allows the carpet rolls to be easily moved into and out of narrow spaces such as truck beds where insufficient space is available to approach the carpet roll with a transport vehicle from the side. Col. 1, Ins. 13-25. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Fowler '683 to include a properly dimensioned pole, as per the teachings of Harris '658, such that carpet rolls are easily moved into and out of narrow spaces such as truck beds where insufficient space is available to approach the carpet roll with a transport vehicle from the side.

With respect to claim 7, Fowler discloses tubes 13, 14 but does not disclose 28-inch long tubes. However, Fowler '683 teaches tubes 13, 14 dimensioned at any length depending on fork length 15, 16 of a standard forklift truck 17 such that a device for attaching to a forklift truck is adjustable in accordance with any fork dimensions and/or load size. Col. 1, Ins. 63-70; col. 1, Ins. 25-40. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to specifically dimension 28 inch long tubes 13, 14, as per the teachings of Fowler, such that the device may fit any forklift truck and fork dimensions and/or load size.

With respect to claim 9, referring to FIGS. 1-6 Fowler discloses vertical support plate 20, 28 but does not disclose a 13 inches length. However, Fowler '683 teaches a vertical support plate 20, 28 of any length dimensioned for forks 15, 16 of a standard forklift truck 17 such that a device for attaching to a forklift truck is adjustable in accordance with any fork dimensions and/or load size. Col. 1, Ins. 63-70; col. 1, Ins. 25-40. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to specifically dimension 13 inch long vertical support 20, 28, as per the teachings of Fowler, such that the device may fit any forklift truck and fork dimensions and/or load size.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-5 & 7-12 have been considered but are moot in view of the new ground(s) of rejection. Amended claim has been addressed on the merits above. Claim 6 is now cancelled.

With respect to the Fowler reference, as noted under 103(a) rejections above Fowler discloses all the features except for intermediate positioning of a vertical support plate. Moser solves this deficiency. The benefits which Applicant cites to support intermediate positioning (i.e. improved tensile strength and decreased turning radius) do not overcome the fact that Moser discloses structure which reads on Applicant's claim 1. While Moser does not disclose Applicant's benefits the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Moser's motivation to move Fowler's support plate to an intermediate point (or in the alternative place a support plate at an intermediate point) overcomes deficiencies such as lifting, supporting and dumping heaving objects within hostile environments such as oil drilling and production industry. Cols. 1-2. It is noted that Applicant's advantages of tensile strength increases and turning radius reductions cited to overcome the prior art must be filed pursuant to MPEP 716.01(a) – 716.07, 37 CFR 1.132 objective evidence or secondary considerations.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th, 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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